

### **REMARKS**

Claims 3-11 and 33-70 were previously pending. New Claims 71-72 have been added.

Claims 3-7 and 33-57 stand rejected under 35 U.S.C. § 112, first paragraph. Claims 58-70 stand rejected under 35 U.S.C. § 101. Claims 3-11, 33, 34, 40, 41, 45, 46, 52, 53, 58, 59, 66 and 67 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Miller et al., US 2001/0054008 A1 (hereafter referred to as "Miller") in view of English, US 2003/0055723 A1 (hereafter referred to as "English") and further in view of Chopra, US 2002/0128920 A1 (hereafter referred to as "Chopra"). Claims 35-39, 47-51 and 61-65 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Miller in view of English, further in view of Chopra, and further in view of Callender et al., US 2002/0147657 A1 (hereafter referred to as "Callender"). Claims 42, 54 and 68 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Miller in view of English, further in view of Chopra, and further in view of Hartman et al., US 5,960,411 (hereafter referred to as "Hartman"). Claims 43, 44, 55-57, 69 and 70 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Miller in view of English, further in view of Chopra, and further in view of Abdulhayoglu, US 7,296,053 B1 (hereafter referred to as "Abdulhayoglu").

#### Discussion of the Rejections under 35 U.S.C. § 112, first paragraph

Although Applicants respectfully maintain that Claims 3-7 and 33-57 as previously pending fully complied with 35 USC § 112, first paragraph, in order to expedite allowance of the present application, Claims 3 and 7 have been amended to remove the limitation "wherein the user does not". Claims 4-7 and 33-57 do not recite the limitation "wherein the user does not". Claim 3 has further been amended to recite that the user can complete the purchase from the featured seller via the web page, without performing any subsequent interactions. Claim 7 has been similarly amended. Applicants note that the foregoing language is supported by Fig. 3 and paragraph 23 of the present application (which recites, in part: "the user can select a shipping destination using control 346, then activate control 345 in order to order the item from the seller without performing any subsequent interactions").

Applicants therefore respectfully request that the rejection of Claims 4-7 and 33-57 under 35 U.S.C. § 112 be withdrawn.

Discussion of the Rejections under 35 U.S.C. § 101

Although Applicants respectfully maintain that the claims as previously pending claimed patentable subject matter under 35 U.S.C. § 101, in order to expedite allowance of the application, Claim 58 has been amended to further reflect the performance of the method by a machine. Claims 59-70 depend from Claim 58. Applicants therefore respectfully request that the rejection of Claims 58-70 under 35 U.S.C. § 101 be withdrawn.

Discussion of the Rejections under 35 U.S.C. § 103

As set forth below, Applicants have traversed the rejections of the pending claims under Section 103(a). The cited art relied on in the Office Action does not disclose or suggest all of the limitations of the pending claims, as amended. Nor does the Office Action explain why the differences between the pending claims and the cited art would have been obvious to one of ordinary skill in the art. “With regard to rejections under 35 U.S.C. § 103, the examiner must provide evidence which as a whole shows that the legal determination sought to be proved (i.e., the reference teachings establish a prima facie case of obviousness) is more probable than not.” MPEP §2142. Accordingly, “the key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious.” MPEP §2142; *see KSR International Co. v. Teleflex, Inc.*, 550 U.S. \_\_\_, (2007)).

Claims 3, 6, 7, 9, and 58

The Office Action rejected Claims 3, 6, 7, 9, and 58 as a group. Each claim is addressed below.

Independent Claim 3

The Office Action rejects Claim 3 under 35 U.S.C. § 103(a) as allegedly being obvious over Miller in view of English and further in view of Chopra. For at least the reasons set forth below, Applicants respectfully submit that the obviousness rejections have been traversed.

The Office Action alleges that Miller discloses the elements of “selecting as the featured seller of the item the identified seller that is offering the selected item at the lowest price”, arguing that paragraphs [0172] - [0179] disclose that the selection of the vendor can be based on price. It appears that the foregoing is an inadvertent statement, as the Office Action later admits that Miller “does not explicitly teach identifying a seller based on the lowest price.” For the purposes of this response, Applicants will assume that the Office Action is not alleging that

Miller discloses “selecting as the featured seller of the item the identified seller that is offering the selected item at the lowest price.”

The Office Action admits that the combination of Miller and English fails to provide the feature of identifying a seller based on the lowest price, and wherein the user does not navigate to the featured seller Web site to complete the purchase from the featured seller. Nonetheless, the Office Action alleges that:

Chopra teaches a method for providing lowest cost purchasing including identifying a seller based on the lowest price (§ 0023-0026), and wherein the user does not navigate to the featured seller Web site to complete the purchase from the featured seller (§ 0029). These known techniques are applicable to the method of Miller as they both share characteristics and capabilities, namely they are directed to providing product information and purchasing products.

However, even assuming that the score of English were included in the criteria of Miller, and even further assuming that Chopra disclosed identifying a seller offering the lowest price for an item, the result would lack the feature of *first* performing an identification of sellers of an item using a set of criteria, and *then* selecting a featured seller from those identified sellers using lowest price for the item.

The Office Action fails to even discuss or acknowledge that the order in which criteria are used to identify sellers and to select a featured seller can alter which seller is selected as a featured seller. Indeed, the Office Action fails to even provide a rational as to why the combination of Miller, English, and Chopra should be modified to *first* identify sellers of an item using a set of criteria, and *then* select a featured seller from those identified sellers using lowest price for the item (rather than, for example, first identify sellers using lowest price for the item and then using a set of criteria to select from identified sellers a featured seller).

Chopra states that its “invention relates to systems and methods for receiving orders for products and/or services, searching source or vendor databases to locate the lowest prices for those products and/or services”. Thus, using the combination of Miller, English, and Chopra, if the method of Chopra were used to identify the lowest cost vendors, and the criteria of Miller and English were then used to select a featured seller from the lowest cost vendors, a different vendor would likely be identified as a featured seller as compared to the featured seller that would be selected via the claimed method (e.g., where the sellers are first identified based on availability

levels and seller scores, and from the identified sellers a featured seller is selected based on lowest item price).

Because the Office Action fails to address the order in which criteria are used to perform the identification and selection, and further fails to provide a rationale to modify the combination of Miller, English, and Chopra to *first* identify sellers of an item using a set of criteria, and *then* select a featured seller from those identified sellers using lowest price for the item, the Office Action has failed to make a prima facie case of obviousness.

Further, the Office Action fails to articulate a clear rationale for combining Chopra with Miller and English, and instead relies on a series of conclusory statements. For example, the Office Action states that:

One of ordinary skill in the art would have recognized that applying the known techniques of Chopra would have yielded predictable results and resulted in an improved method. It would have been recognized that applying the known techniques of Chopra to the teachings of Miller would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applies shows the ability to incorporate such references into similar methods. Further, having the identified seller of Miller be based on lowest price, as taught by Chopra, and completing the purchase of Miller without navigating to the seller web site, as taught by Chopra, would have been recognized by those of ordinary skill in the art as resulting in an improved method that would allow for customers to get the information they desire regarding price and to more quickly and easily complete a purchase.

Applicants respectfully submit that, as stated in MPEP § 2141.I, “[w]hen considering obviousness of a combination of known elements, the operative question is thus ‘whether the improvement is more than the predictable use of prior art elements according to their established functions.’ *KSR International Co. v. Teleflex Inc.*, 550 U.S. \_\_\_, 82 USPQ2d 1385.” However, in this instance, the proposed use of Chopra’s method of providing lowest cost purchasing would change the functionality of Chopra’s method. Using Chopra’s method as proposed by the Office Action interfere with the ability of Chopra’s method of providing lowest cost purchasing, as sellers offering the lowest price would be excluded if they did not satisfy the identification criteria (sellers (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold). Indeed, combining Chopra’s method with Miller and English may very well result in the total

exclusion of sellers offering the item at the lowest price. Thus, the functionality of the elements of Miller would interfere with the functionality of the elements of Chopra. Because the functionality of Chopra's method is altered, and because the functionality of the elements of Miller would interfere with the functionality of the elements of Chopra, it is improper to allege that applying the techniques of Chopra to the teachings of Miller would have yielded predictable results as recited in the Office Action.

In addition, the Office Action fails to articulate, for example how the combination of Miller, English, and Chopra would result "in an improved method that would allow for customers to get the information they desire regarding price," or even mention what types of information a customer desires.

In view of the remarks above, Applicants traverse the combination of Chopra with Miller and English.

#### Dependent Claim 6

Claims 6 depends from Claim 3 and thus, is allowable for at least the same reasons as set forth above in connection with Claim 3. Applicants therefore request that the rejection of Claim 6 under Section 103(a) be withdrawn.

#### Independent Claim 7

With respect to independent Claim 7, as similarly discussed above with respect to Claim 3, the combination of Miller, English, and Chopra fails to teach or suggest an identification and selection systems that first identify, using a set of criteria, sellers meeting those criteria, and then select from the identified sellers a featured seller that is offering the item at the lowest price relative to the other sellers meeting the criteria. Therefore, the combination of Miller, English, and Chopra fails to teach or suggest the elements of:

"an identification subsystem, including program code stored computer readable memory that when executed by a processor performs the act of identifying, among a plurality of sellers, those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold;

a selection subsystem, including program code stored computer readable memory that when executed by a processor performs the act of selecting from the sellers identified among the plurality of sellers as the featured seller of the item the identified seller that is offering the item at the lowest price; and

a reply subsystem, including program code stored computer readable memory that when executed by a processor performs the act of replying to the request for information with a web page associated with a website containing both (1) information describing the item, and (2) a control that when activated, adds the item to a shopping cart and indicates that an order for the item is to be placed with the featured seller, wherein the can complete the purchase from the featured seller via the website, without performing any subsequent interactions.”

Further, Applicants respectfully traverse the combination of Miller, English and Chopra as discussed above with respect Claim 3. Applicants therefore request that the rejection of Claim 7 under Section 103(a) be withdrawn.

Dependent Claim 9

Claim 9 recites "wherein the data structure further comprises contents specifying the display of the control that may be activated to display ordering controls that may be activated to order the selected item from a different one of the plurality of sellers other than the distinguished seller". The Office Action fails to even discuss the foregoing elements, and indeed a careful reading of Miller, English, and Chopra fails to disclose specifying the display of the control that may be activated to display ordering controls that may be activated to order the selected item from a different one of the plurality of sellers other than the distinguished seller, as claimed.

For at least the reason that the Office Action has failed to address each element of Claim 9 and has failed to provide a clear articulation of the reasons why the claimed invention would have been obvious, and because the combination of Miller, English, and Chopra fails to teach or suggest the recited elements, the Office Action has failed to make a prima facie case of obviousness.

Applicants therefore request that the rejection of Claim 9 under Section 103(a) be withdrawn.

Independent Claim 58

With respect to independent Claim 58, as similarly discussed above with respect to Claim 3, the combination of Miller, English, and Chopra fails to teach or suggest first identifying, using a set of criteria, sellers meeting those criteria, and then select from the identified sellers a featured seller that is offering the item at the lowest price relative to the other sellers meeting the criteria. Therefore, the combination of Miller, English, and Chopra fails to teach or suggest the elements of:

among a plurality of sellers, identifying, using the computer system, those that are:

- offering the item for sale;
- have an availability level that satisfies a first criterion;
- have a seller score relating to a plurality of different items offered for sale by the seller that satisfies a second criterion;
- selecting among the identified sellers, using the computer system, as a distinguished seller a seller that is offering the item at a lowest price, offering the item for sale, has an availability level that satisfies the first criterion, and has a seller score that satisfies the second criterion

Applicants therefore request that the rejection of Claim 58 under Section 103(a) be withdrawn.

#### Dependent Claims 4-5

Claims 4-5 depend from Claim 3 and thus, are allowable for at least the same reasons as set forth above in connection with Claim 3. In addition, with respect to Claim 4, the Office Action asserts that because the relied upon references disclose having featured vendors being selected from those that have paid a fee, the "identifying and selecting" occurs before a request is received.

However, the act of identifying and selecting referred to in Claim 4 is not performed by merely selecting sellers that have paid a fee as per Miller. Instead, the method of Claim 4, which depends from independent Claim 3, performs the act of identifying and selecting so as to select item sellers having availability levels and seller scores that satisfy corresponding thresholds, and identifying which of those sellers offers the lowest price, before the request is made by the user. Thus, the combination of Miller, English, and Chopra fails to teach or suggest that the identifying those (1) that are offering the item for sale, (2) whose availability level for the item exceeds a predetermined availability threshold, and (3) having a seller score relating to a plurality of different items offered for sale by the seller that exceeds a predetermined score threshold of Claim 3, and the selecting as the featured seller of the item, from the sellers identified among the plurality of sellers, the identified seller that is offering the item at the lowest price of Claim 3, are performed before the receiving a request for information about the item from the user. Claim 4 has been amended to repeat the relevant language of Claim 1 to make the distinction over the combination of Miller, English, and Chopra more easily apparent.

With respect to amended Claim 5, the combination of Miller, English, and Chopra fails to teach or suggest performing the acts of identifying or selecting at a uniform time interval. Instead, the citation relied upon the Office Action, discloses that the processes illustrated in Figure 11 of Miller is repeated *whenever a product identifier is received*. No time interval is even mentioned or is needed in Miller, because Miller *performs the process in response to each user request for the product rather than based on time*. Thus, if the process of Miller received a first product identifier request, then 5 minutes later received a second product identifier request, and then 13 minutes received a third product identifier request, the process of Miller would be performed in response to each request, although the requests are spaced apart by non-uniform time intervals.

Further, as admitted in the Office Action, Miller merely discloses that a featured seller is determined by the paying seller and the most hits. By contrast, Claim 5, which depends from independent Claim 3, determines “a most recently selected featured seller” wherein the featured seller was selected from item sellers having availability levels and seller scores that satisfy corresponding thresholds, and identifying which of those sellers offers the lowest price. Thus, the most recently “selected” seller of Miller is not a “most recently selected featured seller” selected from item sellers having availability levels and seller scores that satisfy corresponding thresholds, and identifying which of those sellers offers the lowest price. Thus, the combination of Miller, English, and Chopra fails to teach or suggest each element of Claim 5. Claim 5 has been amended to repeat the relevant language of Claim 1 to make the distinction over the combination of Miller, English, and Chopra more easily apparent.

Applicants therefore request that the rejection of Claims 4 and 5 under Section 103(a) be withdrawn.

#### Claims 8 and 11

The Office Action rejected Claims 8 and 11 as a group. In rejecting Claims 8 and 11, the Office Action relies on the basis for rejecting Claims 3-6. Each claim is addressed below.

#### Independent Claim 8

With respect to independent Claim 8, and as similarly discussed above with respect to Claim 3, the combination of Miller, English, and Chopra fails to teach or suggest the elements of “the distinguished seller being selected by offering the selected item for sale at the lowest price



among those sellers of the plurality (1) that are offering the item for sale, (2) whose availability level for the selected item exceed a predetermined availability threshold, and (3) having a seller score that exceeds a predetermined score threshold.” As similarly discussed above with respect to Claim 3, even if Miller, English, and Chopra were combined as proposed by the Examiner, the resulting method would still not provide the elements of Claim 8. For example, the combination of Miller, English, and Chopra would still fail to disclose performing a first identification of sellers using a set of criteria, and *then* selecting a featured seller from those identified sellers using lowest price.

Further, Applicants respectfully traverse the combination of Miller, English and Chopra as discussed above with respect Claim 3.

Applicants therefore request that the rejection of Claim 8 under Section 103(a) be withdrawn.

Dependent Claim 11

Claim 11 depends from Claim 8 and thus, are allowable for at least the same reasons as set forth above in connection with Claim 8. Applicants therefore request that the rejection of Claim 11 under Section 103(a) be withdrawn.

Dependent Claim 10

Claims 10 depends from Claim 8 and thus is allowable for at least the same reasons as set forth above in connection with Claim 8.

Still further, Claim 10 recites "wherein the data structure further contains contents specifying the display of one or more secondary controls that may be activated to order the selected item from a different one of the plurality of sellers other than the distinguished seller, wherein the control for the distinguished seller is displayed more prominently than the secondary controls". While the Office Action admits that Miller, English and Chopra fail to disclose that the control for the distinguished seller is displayed more prominently than the secondary controls, the Office Action argues that the difference is only found in the nonfunctional descriptive material.

Applicants respectfully traverse the rejection. For example, as discussed in MPEP Section 2106.01, a computer that recognizes a particular grouping or sequence of musical notes read from memory and thereafter causes another defined series of notes to be played, requires a

functional interrelationship among that data and the computing processes performed when utilizing that data. Similarly, in the present case, there is a functional interrelationship among the content and the processes performed when utilizing that content as the data structure includes specifications for the processor to carry out (e.g. displaying the control for the distinguished seller more prominently than the secondary controls).

Further, the Office Actions notes that claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. Applicants respectfully note that Claim 10 claims a structure that is different than Miller, English, or Chopra. For example, Claim 10 claims a computer readable medium having a data structure stored thereon which differs from any computer readable medium of Miller, as Miller fails to disclose a computer readable medium that contains a data structure whose contents specify the display of one or more secondary controls that may be activated to order the selected item from a different one of the plurality of sellers other than the distinguished seller, wherein the control for the distinguished seller is displayed more prominently than the secondary controls.

Applicants therefore request that the rejection of Claim 10 under Section 103(a) be withdrawn.

Dependent Claims 33, 45, and 59

Claims 33, 45, and 59 correspondingly depend from Claims 3, 7, and 58 and thus, are allowable for at least the same reasons as set forth in connection with Claims 3, 7, and 58. Further, the references relied on in the Office Action fail to teach or suggest that the featured seller is visually emphasized on the web page with respect to other sellers identified on the web page.

In rejecting Claims 33, 45, and 59, the Office Action relies on Figure 5A of Miller, alleging that Office Max as a local seller is visually identified in a separate box that emphasizes Office Max. However, Figure 5A of Miller appears to teach away from the claimed invention. Rather than emphasize a seller selected by identifying sellers based on criteria enumerated in the independent claims, and then performing a selection of the identified sellers by selecting as a featured seller an identified seller offering the item at the lowest price, **Miller discloses that instead, the local seller is emphasized. Miller does not disclose emphasizing a seller selected from a plurality of sellers meeting certain criteria, where the selected sellers offers the item**

**at the lowest price with respect to plurality of sellers meeting certain criteria.**

Similarly, English appears to teach away from the claimed invention by disclosing a vendor pays to receive a preferential placement, rather than visually emphasizing a seller selected by identifying sellers based on criteria enumerated in the independent claims, and then performing a selection of sellers identified among the plurality of sellers by selecting as a featured seller an identified seller offering the item at the lowest price. Thus, the combination of Miller, English and Chopra fails to teach or suggest each element of Claims 33, 45, and 59.

Applicants therefore request that the rejection of Claims 33, 45, and 59 under Section 103(a) be withdrawn.

**Dependent Claims 34 and 46**

Claims 34 and 46 correspondingly depend from Claims 3 and 7, and thus, are allowable for at least the same reasons as set forth in connection with Claims 3 and 7. Further, the references relied on in the Office Action fail to teach or suggest wherein the availability threshold is settable to different values as claimed.

The Office Action alleges that:

Miller/English/Chopra further teaches the method of claim 3 wherein the threshold is settable to different values (English, ¶ 0062 - note that vendors of varying ratings, i.e. scores, are displayed based on the current vendor rating, i.e. threshold, so that if a user has rated a vendor with 7.5, only vendors with scores the same as or above the threshold of 7.5 are shown, but if the user rated a vendor is 5.0, vendors with scores above the threshold of 5.9 would be shown, thus the threshold is settable to different values).

However, the Office Action fails to discuss each element of the claimed feature. For example, Claim 34 does not recite “wherein the threshold is settable to different values” as stated by the Office Action. Instead, Claim 34 recites “wherein the *availability threshold* is settable to different values.” (Emphasis added). Nowhere do the citations relied upon by the Office Action even mention that an availability threshold is settable to different values. Thus, even assuming *arguendo* English discloses a settable threshold with respect to a vendor score, English fails to disclose an availability threshold is settable to different values. Further, the Office Action provides no rationale to modify the combination of Miller, English, and Chopra to provide an availability threshold settable to different values and so has failed to make a *prima facie* case of obviousness.

Because the combination of Miller, English, and Chopra fails to teach or suggest each element of Claims 34 and 46. Applicants therefore request that the rejection of Claims 34 and 46 under Section 103(a) be withdrawn.

Dependent Claims 40, 41, 52, 53, 66, and 67

Claims 40, 41; 52, 53; 66, and 67 correspondingly depend from Claims 3, 7, and 58 and thus, are allowable for at least the same reasons as set forth in connection with Claims 3, 7, and 58. Further, the citations relied on by the Office Action fail to teach or suggest providing a first plurality of ordering controls corresponding to at least a portion of the plurality of sellers, wherein activation of any of the plurality of controls will cause the item to be added to the same shopping cart as recited by Claim 40.

The Office Action alleges that the foregoing feature is disclosed by Miller, stating "Miller, Fig. 5A, which shows a hyperlink by at least a portion of the sellers to "Add this to my BuyList," i.e. a shopping cart, wherein clicking on the hyperlink will cause the item to be added to the user's shopping cart and ¶¶ 0151, 0171, 0173, 0176 and 0179".

However, the Office Action appears to be speculating as to the functionality of the "Add this to my BuyList" link. Indeed, the specification (including the paragraphs relied upon by the Office Action) never makes reference to a BuyList link. Further, because the specification fails to describe the BuyList link, the specification is not enabling with respect to the BuyList link.

Instead of disclosing providing a first plurality of ordering controls corresponding to at least a portion of the plurality of sellers, wherein activation of any of the plurality of controls will cause the item to be added to the same shopping cart, according to Miller, a user then apparently has to activate a link (a "Buy It Now" link) for a given seller and navigate through that seller's particular purchase process ("Links 508 to more information are also provided in the information frame. In this example, links to the manufacturer, a features page, etc. are provided. Several vendors of the product are provided in the section 510 entitled "Buy It Now!" The section 512 entitled "Buy It In Your Neighborhood" lists vendors of the product based on geographic location. Preferably, maps and/or directions to the vendors are made available to the user," Miller, paragraph [0151]). Thus, it appears that each seller has its own shopping cart, wherein items ordered from different sellers will be placed in different shopping carts. Therefore, the Office Action has failed to make a prima facie case of obviousness with respect to Claim 40.

Applicants similarly traverse the rejection of Claims 52 and 66.

Similarly, with respect to Claims 41, 53, and 67, the references relied on by the Office Action fail to teach or suggest providing a plurality of ordering controls on a first web page corresponding to sellers other than the featured seller, wherein regardless of which of the plurality of ordering controls is activated, the item is placed in the same shopping cart.

Thus, the combination of Miller, English, and Chopra fails to teach or suggest each element of 40, 41, 52, 53, 66, and 67.

Dependent Claims 35, 47, and 61

Claims 35, 47, and 61 correspondingly depend from Claims 3, 7, and 58 and thus, are allowable for at least the same reasons as set forth in connection with Claims 3, 7, and 58. Further, the references relied on by the Office Action fail to teach or suggest the availability threshold is settable to a time period corresponding to a plurality of days.

While the Office Action admits that Miller, English, and Chopra fail to teach the availability threshold is settable to a time period corresponding to a plurality of days, the Examiner states that English, at paragraph [0062], discloses a threshold settable to different values, and asserts that Callender discloses (at Fig. 7, and paragraphs [0006], [0007], [0026], and [0027]) determining item availability, including setting an availability threshold to a time period corresponding to a number of days. The Office Action then alleges that it would have been obvious to apply the technique of Callender to the teachings of Miller/English/Chopra.

As initial matter, the threshold referred to in English, paragraph [0062], is a user voting threshold ("If desired, instead of a binary, thumbs up/thumbs down rating, the system could enable users to provide a rating on a scale, such as from 1-10, or A-F. In such a case, the system could provide information about alternative vendors when the rating is below a certain threshold level"). Thus, it would not make sense and would serve no purpose to make the threshold settable to a time period of any type, much less a time period corresponding to a plurality of days.

Still further, the Office Action appears to have inadvertently mischaracterized Callender. The Callender citations relied upon fail to mention any threshold, much less an availability threshold. The Callender citation is instead directed to determining a probability related to when an item will be available for purchase at a store ("For example, retailer A has a 90% probability

of having 2 units in stock today at location X and an 80% probability of having 1 unit in stock tomorrow at location Y,” Callender, [0027]). No threshold is mentioned.

Thus, even if the disclosure of Callender would be combined with that of Miller/English/Chopra, the result would still not provide an availability threshold is setttable to a time period corresponding to a plurality of days. The Office Action has therefore failed to make a prima facie case of obviousness.

Applicants therefore request that the rejection of Claims 35, 47, and 61 under Section 103(a) be withdrawn.

#### Conclusion

In view of the foregoing, Applicants respectfully submit that independent Claims 3, 7, 8, 58, and 71 are patentably distinct over the cited art and are in condition for allowance. Claims 4-6, 33-44; 45-57; 59-70; and 71, which respectively depend from Claims 3, 7, 58, and 71 are believed to be patentable for the same reasons articulated above with respect to Claims 3, 7, and 58, and because of the additional features recited therein. Applicants therefore respectfully request allowance of Claims 3-11 and 33-71.

#### Request for Interview

Pursuant to M.P.E.P. § 713.01, in order to expedite prosecution of this application, Applicant’s undersigned attorney of record hereby formally requests a telephone interview with the Examiner as soon as the Examiner has considered the effect of the arguments presented above. Applicant’s attorney can be reached at (310) 407-3461 or at the number listed below.

#### No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not

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reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

Co-Pending Applications of Assignee

Applicants wish to draw the Examiner's attention to the following co-pending applications of the present application's assignee.


| Serial Number | Title   | Filed        |
|---------------|---|--------------|
| 11/747,957    | PROFILING ITEM SELLERS TO INFORM ITEM PURCHASING DECISIONS AND BUILD TRUST IN A MULTIPLE-SELLER MARKETPLACE | May 14, 2007 |

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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